

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

BRODERICK LEVAR MCCOY

PLAINTIFF

v.

CIVIL ACTION NO. 1:13-cv-515-KS-MTP

DR. RONALD WOODALL, ET AL.

DEFENDANTS

REPORT AND RECOMMENDATION

THIS MATTER is before the Court on the Motion to Dismiss [20] filed by Defendant Dr. Ronald Woodall. Having considered the Motion, the undersigned is of the opinion that it should be denied without prejudice.

In his Motion, Defendant Woodall contends that he believes Plaintiff failed to exhaust his administrative remedies on his claims against Defendant Woodall. Defendant Woodall also informed the Court that he requested copies of Plaintiff's administrative remedy program file and would supplement the Motion with information from the file. To date, Defendant Woodall has not supplemented the Motion or otherwise presented evidence demonstrating that Plaintiff failed to exhaust his administrative remedies. Based on the current record, the Court cannot determine whether Plaintiff exhausted his administrative remedies. The Court may revisit this issue if the evidence suggests that Plaintiff did not exhaust his administrative remedies. Under the current record, however, this Motion should be denied without prejudice.

Based on the foregoing, the undersigned recommends that Defendant Woodall's Motion to Dismiss [20] be DENIED without prejudice.

NOTICE OF RIGHT TO OBJECT

In accordance with the rules and 28 U.S.C. § 636(b)(1), any party within fourteen days after being served a copy of this recommendation, may serve and file written objections to the

recommendations, with a copy to the judge, the magistrate judge and the opposing party. The District Judge at the time may accept, reject or modify in whole or part, the recommendations of the Magistrate Judge, or may receive further evidence or recommit the matter to this Court with instructions. The parties are hereby notified that failure to file written objections to the proposed findings, conclusions, and recommendations contained within this report and recommendation within fourteen days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the proposed factual findings and legal conclusions accepted by the district court to which the party has not objected. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

THIS the 14th day of July, 2014.

s/ Michael T. Parker

United States Magistrate Judge